

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT LICENSE NO. 470715
Issued To: Thomas Joseph Savoie, Sr: Z-1158 865

DECISION OF THE VICE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2261

Thomas Joseph Savoie, Sr

This appeal has been taken in accordance with Title 46 U.S.C. 239(g) and 46 CFR 5.30-1.

By order dated 19 June 1979, an Administrative Law Judge of the United States Coast Guard at Boston, Massachusetts, suspended Appellant's license for two months upon finding him guilty of the charges of misconduct and negligence. The specifications found proved alleged that while serving as Master on board SS FORT WORTH, O.N. 247276, under authority of the documents above captioned, on or about 21 February 1979, Appellant while navigating the vessel in the Taunton River, Fall River, Massachusetts, negligently failed to insure that the vessel's position was fixed and plotted on the chart of the area as required by 33 CFR 164.11, thereby contributing to the grounding of the vessel; and that while engaged as aforeside Appellant wrongfully failed to notify the nearest Marine Inspection Officer as soon as possible of the grounding of the vessel in the Taunton, Fall River, Massachusetts, as required by 46 CFR 4.05-1.

The hearing was held at Providence, Rhode Island, on 12 March and 17-18 April 1979.

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to each charge and specification.

The Investigating Officer introduced in evidence the testimony of seven witnesses and 12 exhibits.

In defense, Appellant offered in evidence his own testimony. Testimony of witnesses introduced by the Pilot in the joint proceedings were also germane to the charges against Appellant.

After the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charges and accompanying specifications had been proved. He then served a written order on Appellant, suspending all documents issued to him for a period of two months

The entire decision was served on 25 June 1979. Appeal was timely filed on 8 June 1979 and perfected on 9 January 1980.

FINDINGS OF FACT

On 21 February 1979, Appellant was serving as Master on board SS FORT WORTH, O.N. 247276, and acting under authority of his license while the vessel was entering the port of Fall River, Massachusetts.

The jumboized T-2 tanker, loaded with a highly volatile cargo of petroleum distillates, was enroute from a Narragansett Bay anchorage to the Shell Oil dock in Fall River. Visibility was sufficient for navigational purposes, current was negligible, and the tide lacked but a few minutes of reaching flood high. The channel in the Taunton River was generally ice free, but some rafted ice had accumulated around the Braga Street Bridge abutments and sections of the river were frozen over. A Local Notice to Mariners was in effect, warning that ice conditions might have affected the charted position and characteristics of aids to navigation, and in fact Mount Hope Bay Channel Buoy No. 15 (L.L. No. 775.51) was off station.

At Buoy 10, the tanker was boarded by the Docking Pilot, LANCASHIRE, who earlier in the day had traversed the route to be followed to the Shell dock to evaluate ice conditions and to check ranges and buoy conditions. The docking pilot had conned FORT WORTH many times and had 27 years of experience in the local waters. He was aware that Buoy 15 was not watching properly.

As the vessel proceeded inbound at bare steerageway, the docking pilot navigated by reference to terrestrial ranges. There ranges are informal ranges, not established as aids to navigation by the U.S. Coast Guard. Personnel were available, as was operable navigational equipment, to fix the position of the vessel as it proceeded. However, no effort was made to fix and plot the position of the vessel on the chart of the area. In company with FORT WORTH were tow 3000 HP tugboats, available to assist the pilot as needed. Although local practice was for the tugs to be made fast at about Buoy 10, on the date in question the prevailing ice conditions rendered such a course dangerous and the tugboats merely paced the tanker inbound.

The Braga Bridge has a horizontal clearance of 400', the full channel width at that point. About 130 yards north of the bridge is Buoy 15. At Buoy 15 the channel widens to 500 feet and the centerline course alters 36 degrees, from 054° true to 018° true. The charted depth is 35 feet at mean low water. The flood tide, at 1531, would provide an additional depth of 4.4 feet. Also north of the bridge, permanently moored to the east bank, was the battleship

MASSACHUSETTS. Local practice called for vessels to favor the left side of the channel inbound, to avoid wash damage to the moored ship.

At 1519 FORTH WORTH passed through the Braga Bridge and commenced the left turn in the channel in accordance with Docking Pilot LANCASHIRE's customary procedure. At 1519-1/2 one tug put a line to the tanker's port bow; at 1520 the engines were brought from dead slow ahead (3.5kts) to slow ahead, to improve rudder response. At about 1522 the vessel grounded in the area of the No.9 cargo tank, well aft of amidships. Buoy 15 was observed about 100-125 feet "abeam the port quarter," but the vessel's grounded position was never accurately fixed. At the time of grounding the vessel drew 32 feet 4 inches forward and 33 feet 4 inches aft. Soundings confirmed that adequate water existed about the vessel, with the exception of the area adjacent to No. 9 tank. After 50 minutes, at about 1612, the vessel was freed from the strand by the use of her engines and the tugboats.

Chart No. 13227, Edition of February 25, 1978, provides that the controlling depth of the left outside quarter of the channel was 24.0 feet between buoys 15 and 19, with a 28 foot shoal about 100 yards north of the charted position of Buoy 15. An Army Corps of Engineers Survey, dated August, 1972, shows soundings in excess of 35 feet in the left outside quarter of the channel, in the vicinity of Buoy 15.

At about 1545 on the date in question, the Director of the State Pier, Fall River, advised Coast Guard Marine Safety Office, Providence, that a vessel appeared to be aground, out of the ship channel. A coast Guard boarding team already enroute for a routine inspection of FORT WORTH was advised of this information and ordered to investigate. The mobile unit observed the vessel shortly thereafter and attempted to communicate with it by VHF radio on channels 13,16 and 22, without success. The ocean pilot, Davies was still aboard the vessel after being relieved by the docking pilot at Buoy 10. He was advised by radio by one of the tugboats of the communications effort. He notified Appellant who was engaged at the time in efforts to free the vessel. Davies volunteered to respond to the Coast Guard's calls. Davies contacted Coast Guard Station Castle Hill (which the mobile unit had used as a relay point) and informed the radio watch that FORT WORTH was aground inside the channel and that attempts to free the vessel were progressing. Davies advised the Coast Guard that if further assistance was required he would call again. After the vessel was refloated, Davies called Castle Hill and apprised them of the situation and of expected docking within an hour. The vessel docked at 1730.

Two days later, the Coast Guard determined that Buoy 15 was 50 yards off station on a bearing of 350° true. The buoy had a scope of chain allowing it to swing in a circle, radius 22 yards from the sinker's position. The sinker itself was determined to be 30 yards off station on a bearing of 340° true.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that:

I. The record does not support the finding that Appellant negligently failed to insure that the vessel's position was fixed and plotted on a chart of the area, thereby contributing to the grounding; and

II. The evidence adduced established that the Coast Guard was notified of the grounding at the first possible opportunity, considering the circumstances existing at the time of the grounding.

APPEARANCE: Glynn & Dempsey of Boston, Massachusetts, by Leo F. Glynn, Esq.

OPINION

I

The regulations at 33 CFR 164.11 (c) require that "[t]he owner, master, or person in charge [of a vessel underway] insure that... (c) The position of the vessel at each fix is plotted on a chart of the area and the person directing the movement of the vessel is informed of the vessel's position." This regulation was promulgated to implement the Ports and Waterways Safety Act of 1972. Public Law 92-340, as amended. The Act was a response to an increase in vessel traffic occurring in the navigable waters of the United States. The fundamental purpose of the Act was to increase the safety of vessel traffic on America's waterways; not solely for the benefit of the vessels involved, but for the mutual benefit of the general public, the environment, harbor facilities, and users of the navigable waters. The regulations implementing the Act reasonably pursue this goal by seeking to insure that care is exercised in the navigation of vessels by imposing specific requirements on the owner, master, or person in charge. The requirement of 33 CFR 164.11(c) did not spring whole cloth from the minds of the regulation draftsmen, but evolved over the course of the regulatory process. Many of the arguments raised by Appellant against enforcement of this regulation were made previously by public comments during the implementation process. See Fed. Reg.,

Vol. 42, No. 20 at 5956-57 (January 31, 1977) and Fed. Reg., Vol. 41, No 89 at 18766 (May 6, 1976). The burden of this regulation in terms of available manpower, timeliness of information, and interference with navigation in restricted waters was considered. As a result, the original proposal was modified to eliminate some of the requirements initially contemplated. Flexibility was retained by allowing some latitude in the frequency of fixes and the method by which the vessel's position was to be determined. No longer open to interpretation, however, is the requirement that the position be plotted on a chart of the area, and the information be communicated to the person directing the vessel's movement.

In the present case, it is manifest that the Docking Pilot, LANCASHIRE, was not being apprised of such information. The Third Officer, TOOMEY, established by his testimony that neither he nor anyone else on the bridge to his knowledge was plotting the position of the vessel. Further, the chart of the Fall River - Taunton River area in use aboard FORT WORTH is devoid of a single fix for the entire length of channel navigated by the vessel, and even the position at stranding was absent. From this substantial and probative evidence, the Administrative Law Judge was quite correct in concluding that the requirements of the regulation were not met.

Much was made by Appellant of the testimony of the pilot that such information would be disregarded by the pilot in his navigation of the vessel. While comment on this point is not expressly necessary to the resolution of this case, Masters and Pilots might profit from a reminder that the custom of pilots to disregard such information (assuming arguendo that such is the custom) does not necessarily exculpate them in an appropriate case from charges stemming from their prejudice against traditional fixes. See Tug Ocean Prince v. United States, 584 F.2d 1151 (2nd Cir. 1978), cert. denied 440 U.S. 959 (1979) (there are cautions so imperative that their disregard, by custom and usage of a trade, will not meet the necessary standard of care). Appellant as Master of the vessel had the duty to insure compliance with the regulation, and his failure to do so was properly chargeable.

It is informative to note that the pilot testified that he employed terrestrial ranges to maintain the vessel on the channel centerline. TR. 3-57,58. Yet he also testified that he intentionally maneuvered the vessel off the centerline in order to favor the left side of the channel above the Braga Bridge.

Appellant further argues that causality is insufficiently established on this record to link the violation of the regulation to the subsequent grounding. In this regard Appellant misapprehends the nature and purpose of these proceedings. Unlike

civil proceedings sounding in tort, R.S. 4450 proceedings are remedial, and intended to "protect lives and property... against actual and potential danger and not to assess blame for casualties...." Appeal Decision No. 1755. As the cited decision notes "...an individual should be found negligent in these proceedings if he fails to take the precautions a reasonably prudent person would take in the same circumstances whether or not his conduct or failure to act was the proximate or a contributing cause of a casualty." Citing Decisions on Appeal Nos. 1349, 946, 868, 730 and 586. In consequence, the strict causality link discussed by Appellant is not required in these proceedings. I note as well that this charge could as well have sounded in misconduct, by virtue of the violation of the regulation. The regulation of which Appellant was on notice, is itself an indication of the standard of care. See Decision on Appeal No. 1515, at 6 (violation of safety regulation as negligence; and regulation as notice of existing standard of care,) citing Decisions on Appeal Nos. 1093 and 1073. The fact that an aid to navigation was not watching properly is immaterial to the resolution of the issue of Appellant's negligence.

One further point bears discussion with respect to this charge. Appellant allowed the pilot to maneuver FORT WORTH into the left outer quarter of the channel, adjacent to Buoy 15. The record establishes that the charted depth adjacent to the channel varies from 25 to 28 feet and that the controlling channel depth northbound from Buoy 15 to Buoy 17 is 24.0 feet. Even given the flood tide of 4.4 feet, it is clear that any run by the vessel outside the confines of the channel would result in a grounding. In such circumstances, including the known potential for aids to navigation to be dragged off station by ice, Appellant's failure to cause the vessel's position to be monitored is inexplicable.

II

The second charge, sounding in misconduct, alleged the violation of 46 CFR 4.05-1. Certain facts in the record are undisputed. Although the times are somewhat approximate the following chronology was elicited:

1519 FORT WORTH clear Braga Bridge

1522 FORT WORTH stranded

1531 Flood tide

1545 MSO Providence informed of stranding

1545 Coast Guard Mobile Unit attempts radio contact and relays

news of negative success to the MSO via Castle Hill Station

1612 FORT WORTH underway, making way

1730 FORT WORTH safely docked

Not clearly established was the precise time Capt. Davies contacted Coast Guard Station Castle Hill. The suggestion of Appellant that this occurred about 10 minutes after grounding is not credible, as no Coast Guard radio calls were made prior to 1545 at the earliest, and the FORT WORTH call was only made in response to repeated efforts on the Coast Guard's part to raise the vessel. It is apparent that the vessel was on the strand for 20 to 25 minutes at a minimum before contacting the Coast Guard. The fundamental issue here is the reasonableness of Appellant's failure to initiate a radio report of the vessel's situation to the Coast Guard. Since the Marine Safety Office itself employed the facilities of Castle Hill to attempt communications with the vessel, I am persuaded that the communication by Capt. Davies was sufficient to meet the intent of the regulatory requirement that the nearest marine inspection office be notified of a casualty. My conclusion would likely differ on this point had the Marine Safety Office not employed the Castle Hill Station as radio relay.

This of course does not dispose of Appellant's exception to the findings of the Administrative Law Judge. Appellant's concern for the safety of his vessel and crew are not at issue here. They are the natural product of the Master's position of trust and authority. However, the need for timely notice of casualties to the concerned agency is also well documented. Effective investigation of marine casualties is an essential part of the effort of the Coast Guard to maintain and improve the safety of the nation's waterways. Unnoticed in the case at issue apparently, is the language of 46 CFR 4.05-10(a)&b), which clearly contemplates that notice of a marine casualty may be effected by personal appearance of the person in charge or even in written form filed by mail. Since the regulations themselves allow less expeditious forms of notice to qualify as notice "without delay", the "as soon as possible" requirement of 46 CFR 4.05-1 takes on a new lustre. I cannot therefore conclude that Appellant's failure to initiate radio notice during a 50 minute strand constitutes misconduct within the purview of these proceedings. In light of my resolution of this issue, I deem it appropriate to reduce the remedial order imposed by the Administrative Law Judge.

CONCLUSION

Based on the foregoing discussion and citation of authority, I find that the order of the Administrative Law Judge is

appropriate only to the extent of suspending the license of Appellant for a period of two months on twelve months' probation.

ORDER

The Decision and Order of the Administrative Law Judge dated at Boston, Massachusetts, on 19 June 1979, is AFFIRMED in part and VACATED in part. Appellant's license is hereby suspended for two months on twelve months' probation.

R. H. SCARBOROUGH
Vice Admiral, U. S. Coast Guard
Vice Commandant

Signed at Washington, D.C., this 12th day of August 1981.